

REMARKS

Claim 1 is amended to incorporate the feature of claim 5. Amended claim 1 is, in effect, claim 5 rewritten in independent form. Claim 5 is accordingly cancelled, without prejudice. The preambles of claims 2 and 3 are amended consonant with the change to claim 1. Claim 4 as amended herein corresponds to former claim 6, but depends from any one of claims 1 to 3 rather than from claim 1 alone. Claim 6 is amended to depend from claim 3. No new matter is introduced by this Amendment. With this Amendment, claims 1-4 and 6 are before the Examiner for reconsideration.

Rejection over Sakurada and Takahashi

Claims 1-6 had been rejected under 35 U.S.C. § 103(a) as being unpatentable over US 6,193,986 B1 (Sakurada) in view of WO 01/58279¹ (Takahashi). The rejection is respectfully traversed.

The Examiner had contended that Sakurada discloses an oil-in-water emulsion. Applicants respectfully assert that this is incorrect. Instead, Sakurada discloses a water-in-oil emulsion, not an oil-in-water emulsion. See column 2, line 37; column 7, lines 32-42 ("mixing the aqueous phase with an oil phase ... to finally obtain a W/O-type emulsion"); and Sakurada claim 11. The Sakurada water-in-oil emulsions are distinct from the oil-in-water emulsions of the present invention. Also, as the Examiner recognizes, Sakurada fails to teach or suggest sucrose acetate isobutyrate. Even if sucrose acetate isobutyrate were taken from Takahashi and employed in the Sakurada emulsions, one would still not have an oil-in-water emulsion as required by all of the claims now pending in this application.

Accordingly, since Sakurada fails to suggest the oil-in-water emulsions of the present invention and since it has been demonstrated² that the use of sucrose acetate isobutyrate as required by all of Applicants' claims provides unexpected beneficial results, the rejection based upon the Sakurada and Takahashi disclosures is not sustainable.

¹ It is noted that the Examiner refers to the corresponding published U.S. application for his citations of specific disclosure in the Takahashi reference.

² In the 'Declaration under 37 CFR 1.132' of Makoto Ishikawa filed with the Amendment of January 31, 2008.

Conclusion


Early and favorable reconsideration of the merits of claims 1-4 and 6 as amended herein is respectfully requested.

Should there be any questions concerning the present application, the Examiner is respectfully requested to contact Richard Gallagher (Registration No. 28,781) at (703) 205-8008 in order to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

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